

**Belvedere:**  
*Jerry Butler*

December 16, 2004

**Corte Madera:**  
*Melissa Gill*

**TO:** Transportation Authority of Marin Commissioners

**Fairfax:**  
*Lew Tremaine*

**RE:** Agreements with the California State Board of Equalization for Administration and Operation of the TAM Transactions and Use Tax Ordinance 2004-01 – Agenda Item 12

**Larkspur:**  
*Joan Lundstrom*

Dear Commissioners:

**Mill Valley:**  
*Dick Swanson*

With the passage of Measure A by voters on November 2, 2004, TAM is required to contract with the California State Board of Equalization to perform all functions incidental to the administration and operation of the TAM Transactions and Use Tax Ordinance 2004-01 (California Public Utilities Code Section 180204[b]).

**Novato:**  
*Pat Eklund*

**Ross:**  
*Tom Byrnes*

Attached for your review and approval is proposed Resolution 2004-08, which: (1) approves a "Preparatory Agreement" and an "Administrative Agreement" with the State Board of Equalization, and (2) authorizes the Executive Director to execute each agreement. These agreements are standard form agreements that have been prepared by the state and reviewed by our counsel, which must be executed prior to the operative date of TAM Ordinance 2004-01 (April 1, 2005). The Preparatory Agreement is an interim agreement for preparatory work necessary to administer the TAM Ordinance 2004-01, while the Administrative Agreement is the long-term agreement for the administration, collection, and allocation of the new tax.

**San Anselmo:**  
*Peter Breen*

**San Rafael:**  
*Al Boro*

**Sausalito:**  
*Amy Belser*

**Tiburon:**  
*Alice Fredericks*

The Preparatory Agreement provides that the Board of Equalization's costs shall not exceed \$175,000. This amount is within the budget adjustments approved at the November 18, 2004 meeting for Administration purposes, but it is a significant expense. It is likely that other administrative expenses will occur during this fiscal year, and require another budget adjustment.

**County of Marin:**  
*Susan Adams*  
*Hal Brown*  
*Steve Kinsey*  
*Cynthia Murray*  
*Annette Rose*

### **Recommendation**

Staff recommends that TAM adopt Resolution 2004-08, thereby approving the attached agreements with the State Board of Equalization, authorizing the Executive Director to execute each agreement, and authorizing an expense not to exceed \$175,000 for Board of Equalization preparatory costs.

Respectfully Submitted,

Craig Tackabery  
Executive Director

Attachment 1: Resolution 2004-08

# Attachment 1

## RESOLUTION NO. 2004-08

### A RESOLUTION OF THE TRANSPORTATION AUTHORITY OF MARIN AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE AGREEMENTS WITH THE CALIFORNIA STATE BOARD OF EQUALIZATION FOR IMPLEMENTATION OF A LOCAL TRANSACTIONS AND USE TAX

**WHEREAS**, on June 24, 2004, the Transportation Authority of Marin ("TAM") approved Ordinance No. 2004-01, providing for a local, one-half of one percent transactions and use tax; and

**WHEREAS**, the California State Board of Equalization ("Board") administers and collects the transactions and use taxes for all applicable jurisdictions within the state; and

**WHEREAS**, the Board will be responsible to administer and collect the transactions and use tax for TAM; and

**WHEREAS**, the Board requires that TAM enter into a "Preparatory Agreement" and an "Administration Agreement" prior to implementation of said taxes; and

**WHEREAS**, the Board requires that TAM authorize execution of the agreements.

**NOW, THEREFORE, BE IT RESOLVED** that the Transportation Authority of Marin does hereby approve the "Preparatory Agreement" attached as Exhibit A and the "Administrative Agreement" attached as Exhibit B and the Executive Director is hereby authorized to execute each agreement.

**PASSED AND ADOPTED** at a regular meeting of the Transportation Authority of Marin, on the 16th day of December, 2004 by the following vote to-wit:

**AYES:** Commissioners:

**NOES:** Commissioners:

**ABSENT:** Commissioners:

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STEVE KINSEY, CHAIR  
TRANSPORTATION AUTHORITY OF MARIN

ATTEST:

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Craig Tackabery  
Executive Director

# **EXHIBIT A**

## **AGREEMENT FOR PREPARATION TO ADMINISTER AND OPERATE TRANSPORTATION AUTHORITY OF MARIN TRANSACTIONS AND USE TAX ORDINANCE**

In order to prepare to administer a transactions and use tax ordinance adopted in accordance with the provisions of Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code, the TRANSPORTATION AUTHORITY OF MARIN, hereinafter called *TAM*, and the STATE BOARD OF EQUALIZATION, hereinafter called *Board*, do agree as follows:

1. The Board agrees to enter into work to prepare to administer and operate a transactions and use tax in conformity with Part 1.6 of Division 2 of the Revenue and Taxation Code, which has been approved by a majority of the electors of the County of Marin and whose ordinance has been adopted by TAM.

2. TAM agrees to pay to the Board at the times and in the amounts hereinafter specified all of the Board's costs for preparatory work necessary to administer the TAM transactions and use tax ordinance. The Board's costs for preparatory work include costs of developing procedures, programming for data processing, developing and adopting appropriate regulations, designing and printing forms, developing instructions for the Board's staff and for taxpayers, and other appropriate and necessary preparatory costs to administer a transactions and use tax ordinance. These costs shall include both direct and indirect costs as specified in Section 11256 of the California Government Code.

3. Preparatory costs may be accounted for in a manner, which conforms to the internal accounting and personnel records currently maintained by the Board. The billings for costs may be presented in summary form. Detailed records of preparatory costs will be retained for audit and verification by TAM.

4. Any dispute as to the amount of preparatory costs incurred by the Board shall be referred to the State Director of Finance for resolution, and the Director's decision shall be final.

5. Preparatory costs incurred by the Board shall be billed by the Board periodically, with the final billing within a reasonable time after the operative date of the ordinance. TAM shall pay to the Board the amount of such costs on or before the last day of the next succeeding month following the month when the billing is received.

## EXHIBIT A

6. The amount to be paid by TAM for the Board's preparatory costs shall not exceed one hundred seventy-five thousand dollars (\$175,000) (Revenue and Taxation Code Section 7272).

7. Communications and notices may be sent by first class United States mail. Communications and notices to be sent to the Board shall be addressed to:

STATE BOARD OF EQUALIZATION  
P. O. BOX 942879  
SACRAMENTO, CALIFORNIA 94279-0073  
ATTENTION: EXECUTIVE DIRECTOR

Communications and notices to be sent to TAM shall be addressed to:

TRANSPORTATION AUTHORITY OF MARIN  
c/o MARIN COUNTY DEPARTMENT OF PUBLIC WORKS  
P. O. BOX 4186  
SAN RAFAEL, CALIFORNIA 94913  
ATTENTION: CRAIG TACKABERY, EXECUTIVE DIRECTOR

8. The date of this agreement is the date on which it is approved by the Department of General Services. This agreement shall continue in effect until the preparatory work necessary to administer the TAM transactions and use tax ordinance has been completed and the Board has received all payments due from TAM under the terms of this agreement.

TRANSPORTATION AUTHORITY OF MARIN

STATE BOARD OF EQUALIZATION

By \_\_\_\_\_  
Craig Tackabery, Executive Director

By \_\_\_\_\_  
(Executive Director)

# EXHIBIT B

## AGREEMENT FOR STATE ADMINISTRATION OF TAM TRANSACTIONS AND USE TAXES

To carry out Part 1.6 of Division 2 of the Revenue and Taxation Code and the Transactions and Use Tax Ordinance of the TRANSPORTATION AUTHORITY OF MARIN, hereinafter called *TAM*, copy of which Ordinance is attached hereto, and the STATE BOARD OF EQUALIZATION, hereinafter called the *Board* do agree as follows:

### ARTICLE I DEFINITIONS

Unless the context requires otherwise, wherever the following terms appear in the Agreement, they shall be interpreted to mean the following:

1. "TAM taxes" shall mean the transactions and use taxes, penalties, and interest imposed under an ordinance, which complies with Part 1.6 Division 2 of the Revenue and Taxation Code.
2. "TAM Ordinance" shall mean the TAM Transactions and Use Tax Ordinance attached hereto, as amended from time to time, or as deemed to be amended from time to time pursuant to Revenue and Taxation Code Section 7262.2.

### ARTICLE II ADMINISTRATION AND COLLECTION OF TAM TAXES

**A. Administration.** The Board and TAM agree that the Board shall perform exclusively all functions incident to the administration and operation of the TAM Ordinance.

**B. Other Applicable Laws.** TAM agrees that all provisions of law applicable to the administration and operation of the State Sales and Use Tax Law, which are not inconsistent with Part 1.6 of Division 2 of the Revenue and Taxation Code, shall be applicable to the administration and operation of the TAM Ordinance. TAM agrees that money collected pursuant to the TAM Ordinance may be deposited in the State Treasury to the credit of the Retail Sales Tax Fund and may be drawn from that Fund for any authorized purpose, including making refunds, compensating and reimbursing

## **EXHIBIT B**

the Board pursuant to Article IV of this Agreement, and of transmitting to TAM the amount to which TAM is entitled.

### **C. Transmittal of money.**

1. For the period during which the tax is in effect, and except as otherwise provided herein, all TAM taxes collected under the provisions of the TAM Ordinance shall be transmitted to TAM periodically as promptly as feasible, but not less often than twice in each calendar quarter.

2. For periods subsequent to the expiration date of the tax whether by TAM's self-imposed limits or by final judgment of any court of the State of California holding that the TAM Ordinance is invalid or void, all TAM taxes collected under the provisions of the TAM Ordinance shall be transmitted to TAM not less than once in each calendar quarter.

3. Transmittals may be made by mail or electronic funds transfer to an account of the TAM designated and authorized by TAM. A statement shall be furnished at least quarterly indicating the amounts withheld pursuant to Article IV of this Agreement.

**D. Rules.** The Board shall prescribe and adopt such rules and regulations as in its judgment are necessary or desirable for the administration and operation of the TAM Ordinance and the distribution of the TAM taxes collected thereunder.

**E. Preference.** Unless the payor instructs otherwise, and except as otherwise provided in this Agreement, the Board shall give no preference in applying money received for state sales and use taxes, state-administered local sales and use taxes, and TAM transactions and use taxes owed by a taxpayer, but shall apply moneys collected to the satisfaction of the claims of the State, cities, counties, cities and counties, redevelopment agencies, other districts, and TAM as their interests appear.

**F. Security.** The Board agrees that any security which it hereafter requires to be furnished by taxpayers under the State Sales and Use Tax Law will be upon such terms that it also will be available for the payment of the claims of the TAM for TAM taxes owing to it as its interest appears. The Board shall not be required to change the terms of any security now held by it, and TAM shall not participate in any security now held by the Board.

## **EXHIBIT B**

### **G. Records of the Board.**

1. When requested by resolution of the legislative body of the TAM under Section 7056 of the Revenue and Taxation Code, the Board agrees to permit authorized personnel of TAM to examine the records of the Board pertaining to the ascertainment of transactions and use taxes collected for the TAM. Information obtained by the TAM from examination of the Board's records shall be used by the TAM only for purposes related to the collection of transactions and use taxes by the Board pursuant to this Agreement.

2. Furnish the name, address and account number of each seller holding a seller's permit with a registered business location in the TAM.

**H. Annexation.** TAM agrees that the Board shall not be required to give effect to an annexation, for the purpose of collecting, allocating, and distributing TAM transactions and use taxes, earlier than the first day of the calendar quarter which commences not less than two months after notice to the Board. The notice shall include the name of the county or counties annexed to the extended TAM boundary. In the event the TAM shall annex an area, the boundaries of which are not coterminous with a county or counties, the notice shall include a description of the area annexed and two maps of the TAM showing the area annexed and the location address of the property nearest to the extended TAM boundary on each side of every street or road crossing the boundary.

## **ARTICLE III**

### **ALLOCATION OF TAX**

**A. Allocation.** In the administration of the Board's contracts with all districts that impose transactions and use taxes imposed under ordinances, which comply with Part 1.6 of Division 2 of the Revenue and Taxation Code:

1. Any payment not identified as being in payment of liability owing to a designated district or districts may be apportioned among the districts as their interest appear, or, in the discretion of the Board, to all districts with which the Board has contracted using ratios reflected by the distribution of district taxes collected from all taxpayers.

## **EXHIBIT B**

2. All district taxes collected as a result of determinations or billings made by the Board, and all amounts refunded or credited may be distributed or charged to the respective districts in the same ratio as the taxpayer's self-declared district taxes for the period for which the determination, billing, refund or credit applies.

**B. Vehicles, Vessels, and Aircraft.** For the purpose of allocating use tax with respect to vehicles, vessels, or aircraft, the address of the registered owner appearing on the application for registration or on the certificate of ownership may be used by the Board in determining the place of use.

### **ARTICLE IV** **COMPENSATION**

TAM agrees to pay to the Board as the Board's cost of administering the TAM Ordinance such amount as is provided for by law. Such amounts shall be deducted from the taxes collected by the Board for TAM.

### **ARTICLE V** **MISCELLANEOUS PROVISIONS**

**A. Communications.** Communications and notices may be sent by first class United States mail to the addresses listed below, or to such other addresses as the parties may from time to time designate. A notification is complete when deposited in the mail.

Communications and notices to be sent to the Board shall be addressed to:

STATE BOARD OF EQUALIZATION  
P.O. BOX 942879  
SACRAMENTO, CALIFORNIA 94279-0073  
ATTENTION: EXECUTIVE DIRECTOR

Communications and notices to be sent to TAM shall be addressed to:



## **EXHIBIT B**

TRANSPORTATION AUTHORITY OF MARIN  
c/o MARIN COUNTY DEPARTMENT OF PUBLIC WORKS  
P. O. BOX 4186  
SAN RAFAEL, CALIFORNIA 94913  
ATTENTION: CRAIG TACKABERY, EXECUTIVE DIRECTOR

**Unless otherwise directed, transmittals of payment of TAM transactions and use taxes will be sent to the address above.**

**B. Term.** The date of this Agreement is the date on which it is approved by the Department of General Services. The Agreement shall take effect on April 1, 2005 but no earlier than the first day of the first calendar quarter commencing after such approval. This Agreement shall continue until December 31 next following the operative date of the TAM Ordinance, and shall thereafter be renewed automatically from year to year until the Board completes all work necessary to the administration of the TAM Ordinance and has received and disbursed all payments due under that Ordinance

**C. Notice of Repeal of Ordinance.** TAM shall give Board written notice of the repeal of the TAM Ordinance not less than 110 days prior to the operative date of the repeal.

### **ARTICLE VI**

#### **ADMINISTRATION OF TAXES IF THE ORDINANCE IS CHALLENGED AS BEING INVALID**

##### **A. Impoundment of funds.**

1. When a legal action is begun challenging the validity of the imposition of the tax, TAM shall deposit in an interest-bearing escrow account, any proceeds transmitted to it under Article II. C., until a court of competent jurisdiction renders a final and non-appealable judgment that the tax is valid.

2. If the tax is determined to be unconstitutional or otherwise invalid, TAM shall transmit to the Board the moneys retained in escrow, including any accumulated interest, within ten days of the judgment of the trial court in the litigation awarding costs and fees becoming final and non-appealable.

## EXHIBIT B

**B. Costs of administration.** Should a final judgment be entered in any court of the State of California, holding that the TAM Ordinance is invalid or void, and requiring a rebate or refund to taxpayers of any taxes collected under the terms of this Agreement, the parties mutually agree that:

1. Board may retain all payments made by TAM to Board to prepare to administer the TAM Ordinance.

2. TAM will pay to Board and allow Board to retain Board's cost of administering the TAM Ordinance in the amounts set forth in Article IV of this Agreement.

3. TAM will pay to Board or to the State of California the amount of any taxes plus interest and penalties, if any, that Board or the State of California may be required to rebate or refund to taxpayers.

4. TAM will pay to Board its costs for rebating or refunding such taxes, interest, or penalties. Board's costs shall include its additional cost for developing procedures for processing the rebates or refunds, its costs of actually making these refunds, designing and printing forms, and developing instructions for Board's staff for use in making these rebates or refunds and any other costs incurred by Board which are reasonably appropriate or necessary to make those rebates or refunds. These costs shall include Board's direct and indirect costs as specified by Section 11256 of the Government Code.

5. Costs may be accounted for in a manner, which conforms to the internal accounting, and personnel records currently maintained by the Board. The billings for such costs may be presented in summary form. Detailed records will be retained for audit and verification by TAM.

6. Any dispute as to the amount of costs incurred by Board in refunding taxes shall be referred to the State Director of Finance for resolution and the Director's decision shall be final.

7. Costs incurred by Board in connection with such refunds shall be billed by Board on or before the 25th day of the second month following the month in which the judgment of a court of the State of California holding the TAM Ordinance invalid or void becomes final. Thereafter Board shall

## **EXHIBIT B**

bill TAM on or before the 25th of each month for all costs incurred by Board for the preceding calendar month. TAM shall pay to Board the amount of such costs on or before the last day of the succeeding month and shall pay to Board the total amount of taxes, interest, and penalties refunded or paid to taxpayers, together with Board costs incurred in making those refunds.

TRANSPORTATION AUTHORITY OF MARIN

STATE BOARD OF EQUALIZATION

By \_\_\_\_\_  
Craig Tackabery, Executive Director

By \_\_\_\_\_  
(Executive Director)